

**TESTIMONY OF
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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES**

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Good Morning Mr. Chairman and Members of the Subcommittee, I am Ben Grumbles, Assistant Administrator for the Office of Water at the United States Environmental Protection Agency (EPA). Thank you for the opportunity to discuss an important issue facing the United States -- impaired watersheds and legacy impacts from abandoned mines.

The Abandoned Mine Problem

Inactive or abandoned mine sites can pose serious public safety and environmental hazards. The good news is that there are significant resources available through voluntary efforts to remediate these sites and address safety and environmental problems. Unfortunately, as a result of avoidable legal obstacles, we have been unable to take full advantage of opportunities to promote cooperative conservation through partnerships that will restore and enhance abandon mine sites throughout the United States.

According to estimates, there are over half a million abandoned mines nationwide, most of which are former hardrock mines located in the western States. Acid mine drainage from abandoned mines is responsible for damaging watersheds and degrading water quality throughout the United States. Moreover, abandoned mines are among the largest sources of pollution degrading water quality.

Mine drainage and runoff problems can be extremely complex and solutions are often highly site specific. In many cases, the parties that are responsible for the pollution and cleanup of these mines no longer exist. However, over the years, an increasing number of Good Samaritans, who are not responsible for the pollution, have stepped forward on a voluntary basis to cleanup these mines. Through their efforts, we can help restore watersheds and improve water quality.

Liability

The threat of liability, whether under the Clean Water Act (CWA) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), can be an impediment to voluntary remediation. A private party cleaning up a release of hazardous substances might become liable as either an operator of the site, or as an arranger for disposal of the hazardous substances. Under the CWA, a party may be obligated to obtain a discharge permit which requires compliance with water quality standards in streams that are already in

violation of these standards. The potential assignment of liability occurs even though the party performing the cleanup did not create the conditions causing or contributing to the degradation. Addressing this liability threat will encourage more Good Samaritans to restore watersheds impacted by acid mine drainage.

Partial cleanups by Good Samaritans will result in meaningful environmental improvements and will accelerate achieving water quality standards. Yet, in many cases, the impacted water bodies may never fully meet water quality standards, regardless of how much cleanup or remediation is done. By holding Good Samaritans accountable to the same cleanup standards as polluters or requiring strict compliance with the highest water quality standards, we have created a strong disincentive to voluntary cleanups. Unfortunately, this has resulted in the perfect being the enemy of the good. However, by removing this threat of liability, we will encourage more voluntary and collaborative efforts to restore watersheds impacted by acid mine drainage.

Let me emphasize, however, encouraging Good Samaritan cleanups is not about lowering environmental standards nor letting polluters off the hook. Good Samaritans should be held to a realistic standard that results in environmental improvements. And those responsible for the pollution, if still in existence, will remain accountable, consistent with the Agency's "polluter pays" policy.

Cooperative Conservation and EPA's Good Samaritan Initiative

President Bush's August 2004 Executive Order on Cooperative Conservation requires federal agencies to ensure -- when taking actions that relate to the use, protection, enhancement, and enjoyment of our natural resources -- that the agencies will engage in collaborative partnerships with State, local, and tribal governments, private for profit and nonprofit institutions, and other non-government entities and individuals.

Last August, as part of the President's Cooperative Conservation conference, EPA's Administrator Steve Johnson announced the Good Samaritan Initiative as a means to encourage more effective voluntary efforts to remediate damage from abandoned mines.

The Good Samaritan Initiative accomplishes this objective by empowering communities and grass-roots organizations to confront environmental challenges. Encouraging voluntary Good Samaritan cleanups at abandoned mine sites is a key component of the Administrator's Action Plan, and is fully consistent with President Bush's commitment to cooperative conservation. The Good Samaritan initiative is intended to remove legal impediments that have hindered the remediation of sites threatened by abandoned mine runoff and accelerate the progress of environmental restoration. EPA strongly believes that liability should rest squarely on parties responsible for the environmental damage, not on those who are trying to clean it up.

Good Samaritan Tools

Under EPA's Good Samaritan Initiative, we are developing a model Good Samaritan Agreement and comfort/ status letter that can be used to provide greater legal certainty to a volunteer while also providing adequate assurances to the Agency that a cleanup will be performed properly. We are also working closely with our Federal land management agencies and State partners to encourage, where appropriate, greater use of voluntary cleanup programs for abandoned mine remediation. In addition, we are working on guidance that will help Good Samaritans understand our interagency approach to these cleanups. We expect to announce our administrative toolbox in the very near future to provide Good Samaritans further guidance and options on cleaning up abandoned mines.

Good Samaritan Activities

The first project under the Agency's Good Samaritan Initiative is the abandoned mine in Utah's American Fork Canyon. We are working with Trout Unlimited (TU) and a private landowner who had not caused the pollution at the site. This project will result in the restoration of a watershed that has been impacted for well over a century, restoring the water quality and the habitat of a rare cutthroat trout species. Restoration of the American Fork is part of an

ambitious multi-year effort by Trout Unlimited to draw attention to the problem of abandoned mines in the western United States while also identifying solutions. EPA has learned from the experience of the Trout Unlimited project and is putting those lessons to good use. This restoration effort exemplifies how cooperative conservation -- placing a premium on collaboration and cooperation over confrontation and litigation -- can accelerate environmental protection.

The EPA is working actively with a broad array of stakeholders to discuss removing legal obstacles and proposing potential solutions to abandoned mine remediation. In January, senior officials from EPA attended a roundtable cosponsored by the Office of Water and the Western Governor's Association. Participants included representatives from the western States, the environmental community, the mining community, and others.

EPA recently participated in the release of a report by the Center of the American West at the University of Colorado, Boulder on the history of the nation's mining industry and the environmental legacy that remains. I understand that you will be hearing much more about this report during the next panel of this hearing. But I would like to say that the report clearly highlights the challenges -- at the federal, State, and local level -- in reducing the effects of inactive and abandoned mines. The Report also provided useful suggestions to manage this difficult problem.

Legislative Efforts

This issue is so important to us that EPA is working with the Administration on developing a legislative proposal, the “Clean Watershed Bill,” that will encourage Good Samaritan projects and provide clarity on the qualifications necessary to become a Good Samaritan. The legislation will establish a streamlined permitting program where volunteers can apply to restore property affected by mine drainage from hardrock mines. It will specify who can become a Good Samaritan, and the steps the volunteer must take to participate in this process. It will also provide common sense cleanup standards, public accountability, and reliability. The legislation will: encompass many of the ideas that members of Congress have previously advocated in earlier bills; incorporate the thoughts of State, tribal, and local entities; and, consider Federal land management authorities and responsibilities to achieve a comprehensive partnership among all involved parties in the cleanup of abandoned or inactive mines. We hope to be able to share more of the details of this work with you in the near future.

We applaud the bipartisan legislative efforts in both houses of Congress to address the issue, and we look forward to working with this Committee on legislation. In the interim, and until such time as Good Samaritan legislation is enacted, EPA will continue to encourage and facilitate clean up of abandon mines through use of its administrative authorities.

Conclusion

We hope the Good Samaritan initiative will be a springboard for future successes, such as those achieved through the Brownfields program. But unlike a Brownfield, Good Samaritans are not looking to purchase the property or receive monetary awards for their efforts -- they simply want to engage in voluntary stewardship activities that benefit the environment.

The bottom line is that this type of innovative partnership agreement -- coupled with targeted watershed grants and other assistance -- can help dramatically in revitalizing thousands of water bodies harmed by acid mine runoff.

A comprehensive solution to the problem associated with abandoned mine remediation is long overdue. EPA is actively working with Congress and our partners at the State and local levels to create a long-term solution to encourage and expedite Good Samaritan cleanups. EPA will continue to provide leadership through the Good Samaritan Initiative and to work with our Federal land management agencies, States and Congress to pass legislation that promotes and encourages environmental restoration of abandon mine sites across the country.

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